

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Equal Access and Interconnection  
Obligations Pertaining to  
Commercial Mobile Radio Services

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CC Docket No. 94-54  
RM-8012

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc.

Robert S. Foosaner  
Senior Vice President  
Government Affairs

Lawrence R. Krevor  
Director - Government Affairs

Laura L. Holloway  
General Attorney

800 Connecticut Ave., N.W.  
Suite 1001  
Washington, D.C. 20006  
202-296-8111

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### SUMMARY

In approaching the issues raised in this Notice Of Proposed Rule Making, the Federal Communications Commission ("Commission") must recognize that many of the duties and obligations imposed upon landline providers were fueled by the monopoly control once exercised over the landline telephone industry. These duties and obligations are not necessarily transferrable to the Commercial Mobile Radio Service ("CMRS") marketplace.

Equal access obligations, for example, are left over from the bottleneck control local exchange carriers ("LECs") exercised over the interexchange carrier industry after the break-up of the Bell System. No such bottleneck exists in the world of CMRS where there are an increasing number of wireless participants offering access to competitive long-distance carriers. The absence of a CMRS bottleneck to interexchange access, coupled with the significant costs and burdens imposed by an equal access requirement, demonstrate that there is no justification for imposing equal access obligations on new entrant CMRS providers such as wide-area Enhanced Specialized Mobile Radio ("ESMR") systems.

As recognized by the Commission, interconnection of CMRS providers to local exchange carriers is imperative to the evolution of a competitive wireless market. The Commission must ensure that all CMRS participants are provided interconnection on nondiscriminatory terms, conditions and rates. Whether the Commission allows private contracting or requires tariffs, the LECs' historical discriminatory treatment of wireless carriers cannot be tolerated. Likewise, the Commission must ensure that

CMRS providers receive the mutual compensation to which they are entitled for terminating calls originating on the wireline system.

Mandated CMRS-to-CMRS interconnection, however, is premature in an industry which is still developing. Similarly, resale obligations are not necessitated by the CMRS market structure, which will include cellular, wide-area ESMR, paging and personal communications services. As these competing systems are placed into operation, there will be a natural evolution to a competitive market without the need for imposing resale obligations on these carriers.

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Nextel Communications, Inc. ("Nextel"), pursuant to Section 1.415 of the Federal Communications Commission's ("Commission") Rules, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making and Notice of Inquiry (the "NPRM") in the above-captioned proceeding.<sup>1/</sup>

On February 3, 1994, the Commission adopted its Second Report and Order (the "CMRS Order") in Docket No. 93-252,<sup>2/</sup> implementing the basic provisions of Sections 3(n) and 332(c) of the Communications Act (the "Act") as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").<sup>3/</sup> The

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<sup>1/</sup> FCC 94-145, released July 1, 1994. On August 11, 1994, the Commission extended the time for comments to September 12, 1994. See DA 94-877, released August 11, 1994.

<sup>2/</sup> Implementation of Sections 3(n) and 332(c) of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994), erratum, Mimeo No. 92486, released March 30, 1994 ("CMRS Order").

<sup>3/</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(B), 107 Stat. 312, 392 (1993).

CMRS Order established a revised regulatory structure for the mobile services by creating a new category of mobile communications providers -- "Commercial Mobile Radio Service" ("CMRS").<sup>4/</sup> Along with the creation of CMRS, the Commission was also required by Congress to establish a set of technical, licensing and operational rules for CMRS. On August 9, 1994, the Commission adopted its Third Report and Order in Docket No. 93-252, establishing these CMRS rules.<sup>5/</sup>

The Commission initiated this rule making to further define the duties and obligations of CMRS providers. Specifically, the Commission queried whether CMRS providers should be subject to the equal access obligations currently imposed upon wireline-affiliated cellular companies as well as local exchange carriers ("LECs"); whether the CMRS interconnection obligations imposed upon LECs in the CMRS Order should be tariffed or left to the good faith negotiations of the parties; whether CMRS providers should be required to interconnect with one another upon reasonable request;

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<sup>4/</sup> Congress defined a CMRS provider as one who provides interconnected mobile telecommunications service to the public (or a substantial portion thereof) for profit. CMRS services are subject to Title II of the Act as a common carrier service. However, for those services which, prior to the enactment of the Budget Act, were classified as private services, Congress enacted a three-year transition period. During this transition period, which is set to expire on August 10, 1996, such parties will continue to be regulated as private carriers and will not be subject to any of the obligations imposed upon a common carrier. See Section 6002(c)(2)(B) of the Budget Act; CMRS Order at paras. 280-284.

<sup>5/</sup> See Third Report and Order, adopted August 9, 1994; released September \_\_, 1994.

and whether CMRS providers should be required to permit resale of their services.

Nextel comments on each of the issues presented in the NPRM. As a threshold matter, the Commission should recognize that the emerging CMRS marketplace is significantly different from the landline local exchange industry which had its origins in the pre-divestiture AT&T monopoly. Whereas the local exchange bottleneck monopoly necessitated mandated equal access to interexchange providers, the CMRS industry features an increasing number of wireless access providers to interexchange carriers ("IXCs").

Mandated equal access is not necessary where there is no bottleneck control of access to competitive interexchange services. Requiring new entrant wireless carriers to provide equal access would impose substantial costs on them, thereby hampering their competitiveness without providing countervailing benefits to consumers. Even under minimal equal access options, e.g., a dial-around arrangement, the costs of mandated equal access are too great in relation to the benefits -- if any -- derived therefrom.

## II. BACKGROUND

Nextel, established in 1987 as Fleet Call, Inc., is the largest provider of Enhanced Specialized Mobile Radio ("ESMR") services and traditional Specialized Mobile Radio ("SMR") services in the United States. ESMR services, also known as wide-area SMR services, provide customers with mobile telephone, paging and dispatch services all in a single handset along with improved clarity and reception and a host of enhanced features. Traditional



SMR services, on the other hand, provide primarily fleet dispatch services.

In May of this year, Nextel initiated full commercial operation of its first ESMR service in Los Angeles and soon thereafter expanded into Northern California, including the San Francisco metropolitan area. By the end of 1996, Nextel intends to provide ESMR services to customers in the 50 largest wireless communications markets in the U.S.

ESMR, created and developed by Nextel, involves a reconfiguration of SMR stations, the application of digital technology, and the operation of multiple low-power base stations with significant channel reuse. These innovations -- introduced at a cost of over one billion dollars to Nextel -- make possible an advanced mobile communications system capable of providing mobile telephone service comparable to that currently provided by the cellular industry, as well as private network dispatch, paging and mobile data services.

The issues raised in the NPRM are of major significance to Nextel. In implementing a nationwide digital ESMR network, Nextel must interconnect with local exchange carriers throughout the Nation. The same will be true for PCS and other CMRS providers offering wide-area, regional and nationwide services. Accordingly, in this proceeding, the Commission should take the actions necessary to assure the ability of all CMRS providers to obtain appropriate interconnection with LEC facilities at comparable

rates, and on comparable terms and conditions, for comparable interconnection services.

Similarly, as discussed herein, the costs and administrative requirements of mandated equal access would be a significant competitive factor for new entrant providers facing the challenges of constructing networks, providing competitive services and obtaining market share. The Commission should carefully consider whether requiring all CMRS providers -- particularly start-up new entrants -- to offer equal access would truly further its goal of fostering a robustly competitive CMRS marketplace.

### III. EQUAL ACCESS

#### A. The Commission Should Not Impose Equal Access Obligations On CMRS Providers.

1. The CMRS marketplace is not a bottleneck which requires an equal access obligation to ensure that consumers have a choice of long-distance carriers.

In seeking to impose equal access obligations on some or all CMRS providers, the Commission has ignored the genesis of the equal access concept. Equal access obligations were imposed upon LECs in the "Modified Final Judgement" ("MFJ"),<sup>6/</sup> the Bell System divestiture decree. Equal access was necessary to assure that the LECs provided all IXCs with interconnection arrangements equal in type, quality and price to those provided to AT&T and its affiliates. Without mandated equal access, nearly all end-user originating long-distance traffic would have continued to be routed to AT&T, the primary long-distance provider at that time. In other

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<sup>6/</sup> United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982) aff'd sub nom Maryland v. U.S., 460 U.S. 1001 (1983) ("MFJ").

words, because end-users had no choice but to subscribe to the monopoly LEC for individual or business telephone service, mandated equal access requirements were necessary to ensure that these end-users could choose among competing long-distance carriers. Absent an equal access obligation, the LEC "bottleneck" to interexchange access limited LEC subscribers to the interexchange carrier selected by the LEC -- thereby impeding interexchange competition.

While the landline local exchange bottleneck continues to be a fact of life for most subscribers, there is no such bottleneck in the world of CMRS services. Customers looking to contract for wireless services have more than one option. A wireless user can choose among an increasingly broad menu of wireless services -- each of which may offer different interexchange access options. In the future, consumers will have an even broader array of choices as ESMR and personal communications services ("PCS") begin to enter markets where cellular has long been the dominant wireless two-way service provider.

It is this *choice* of CMRS services that negates the need for equal access obligations. If a wireless user prefers Long Distance Company A ("A") and his current CMRS provider does not provide access to A, then the user can choose another provider offering access to A. If a CMRS provider finds that a significant number of its customers and potential customers prefer A, that CMRS provider will have compelling marketplace incentives to provide access to A. If it fails to do so, the CMRS provider will lose market share and place itself at a competitive disadvantage. The decision to

provide access to A will be made, not because regulatory obligations require it, but because the benefits of providing access to A (and thereby attracting more customers) outweigh the costs of providing access.

Thus, in a marketplace with multiple providers of similar services, mandated equal access obligations -- particularly the full-blown IXC access required of the LECs -- is not necessary to assure end-users access to competitive long distance services. As the CMRS industry develops, consumers will have a range of choices in finding a wireless provider as well as an IXC.<sup>7/</sup> There is no monopoly bottleneck access for CMRS customers to IXC services; therefore, equal access obligations for all CMRS providers would impose unnecessary and inefficient hardware and software changes on many carriers resulting in higher prices for the consumer. In the landline local exchange monopoly, the benefits derived from requiring equal access have to date outweighed their costs in fostering competitive long distance telephone services. The increasing availability of multiple CMRS providers offering similar services will enable wireless customers to reach competing IXCs, at reasonable prices without mandated equal access obligations.

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<sup>7/</sup> The NPRM indicates that the Commission would phase in mandated equal access requirements for non-wireline cellular providers and other CMRS licensees. By the time a phase-in is effective, the entry of new CMRS competitors (e.g., PCS and ESMR services) will render equal access unnecessary to assure multiple access to IXC services.

2. Emerging CMRS entrants have no market power; therefore, imposing equal access requirements on such providers will not achieve significant competitive benefits.

In the NPRM, the Commission concluded that both wireline and non-wireline cellular providers should be required to provide equal access to IXCs. Focusing its analysis on the market power of cellular providers, the Commission found that equal access obligations would increase end-users' choices for IXCs while lowering prices; increase access to telecommunications networks; allow IXCs to develop long-distance service packages which would decrease rates and increase demand for their services; and ensure regulatory parity among wireline and non-wireline cellular providers.<sup>8/</sup> The Commission recognized further that the imposition of equal access obligations on providers without market power could have "unintended consequences which could detract from or undermine the potential benefits of imposing equal access."<sup>9/</sup>

Cellular providers currently are in a position of market dominance in the CMRS industry due to their decade-long head-start.<sup>10/</sup> As new market entrants, other CMRS providers such as PCS and ESMR have very few customers, if any at all, and possess no market power. Thus, unlike cellular providers who have the market position to dictate customers' wireless and IXC choices, other CMRS providers lack this leverage and are unable to dictate customer

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<sup>8/</sup> See NPRM at paras. 36 et seq.

<sup>9/</sup> Id. at para. 34.

<sup>10/</sup> See NPRM at paras. 42-43; See also CMRS Order at paras. 138, 139 and 145.

decisions. Moreover, as recognized by the Commission in the NPRM, the costs and administrative burdens of equal access obligations will interfere with their ability to establish a competitive position in the marketplace, and thereby delay the development of a robustly competitive CMRS marketplace.

Imposing equal access obligations on all CMRS providers will not increase choices while decreasing rates for wireless and long distance services. Rather, as discussed below, these obligations will impose significant costs on new entrants which will be passed on to consumers, resulting in higher, rather than lower, rates. Because end-users will be able to choose among multiple CMRS providers offering various combinations of wireless and long distance services, the essential justification of monopoly access to IXC offerings is absent in the CMRS industry.<sup>11/</sup> Therefore, there is no justification for imposing these additional burdens on new CMRS participants, thereby slowing their market entry and handicapping their developing competitiveness with existing cellular providers.<sup>12/</sup>

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<sup>11/</sup> The Commission also relies on the fact that because the wireline cellular companies currently are required to provide equal access, the Commission is compelled by regulatory parity to impose the obligation on non-wireline cellular as well. The Bell Operating Companies, however, recently asked the court to abandon the equal access requirement. If the court grants their request, the justification of equal access obligations will be further eroded.

<sup>12/</sup> At some point in the future, there may be a sufficient diminution of cellular carrier market power, and a sufficient number of CMRS providers, such that equal access need not be imposed on any CMRS services. For example, H.R. 3636, the telecommunications legislation passed by the U.S. House of Representatives on June 28, 1994, would eliminate mandated CMRS

3. The costs and burdens of mandated equal access outweigh the resultant consumer benefits.

Nextel's market research indicates that a choice of long-distance carrier is not typically a significant criteria in the subscription decisions of wireless customers. Wireless customers and prospective customers are more concerned with the "bottom line" -- getting the best deal on wireless and long-distance services -- than they are with having the right to a particular long-distance carrier. Long-distance companies are in a position to negotiate with the various CMRS providers -- cellular, PCS, ESMR, and SMR -- so that these CMRS providers can offer their customers the lowest-priced long-distance service available through bulk discounts. Absent mandated equal access, CMRS providers could contract with a particular long-distance carrier -- or perhaps two or three long-distance carriers -- for such discounts. These discounts could then be passed along to the consumer resulting in lower long-distance prices.<sup>13/</sup> The potential for economic efficiencies through such vertical integration of wireless and IXC services should not be abandoned without a demonstrated need for mandated equal access to be imposed on new entrant CMRS carriers.

Conversely, imposing equal access obligations on CMRS providers would increase the price of long-distance service to CMRS customers. Equal access would impose significant and costly

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equal access obligations after 1998.

<sup>13/</sup> The NPRM specifically recognizes that economic efficiencies could be gained by the vertical integration of wireless and IXC services -- efficiencies that would be lost if equal access is mandated. See NPRM at para. 41.

burdens on wide-area ESMR networks. For example, Nextel's ESMR systems cannot at this time offer equal access because the Northern Telecom switching equipment in Nextel's ESMR systems was designed in accordance with the European GSM standard which has no equal access requirements. Adding equal access capabilities to these switches will add millions of dollars of additional costs to the implementation of ESMR systems. Current estimates from the manufacturer indicate that the needed changes would not be available for commercial implementation until sometime in 1996.

Thus, requiring Nextel's ESMR systems to offer equal access would adversely affect ESMR system design, costs and implementation. Nextel would have to incur the developmental costs of the necessary switching hardware and software changes, modify all switches installed by the time the equal access changes are ready for commercial installation, and pay more for equal access-capable switching equipment after that time.<sup>14/</sup> This could seriously impact the competitiveness of ESMR networks with incumbent cellular services. Regardless of the extent to which the Commission imposes equal access requirements -- if any -- on CMRS

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<sup>14/</sup> Nextel and other wide-area SMR providers have already invested tens of millions of dollars in infrastructure development. Nextel, for example, is in the process of implementing its ESMR systems in nearly a half-dozen markets within the next year. Each of these systems would have to be retrofit for equal access capabilities once the necessary hardware and software modifications are developed, tested and ready for implementation. Thus, if the Commission requires ESMR systems to offer equal access, Nextel would have to absorb not only the costs of developing equal access capability for its GSM-based switches, but also the costs of modifying already-installed equipment and the higher costs of new equipment -- not to mention the ongoing costs of equal access administration discussed herein.



providers, no reclassified CMRS provider -- e.g., ESMR, SMR -- can be subject to these obligations before August 10, 1996.

The second set of costs imposed by mandated equal access would be the continuing cost of operating and administering an equal access program. As currently imposed upon LECs and wireline cellular companies, equal access obligations entail significant administrative responsibilities. The pre-subscription and balloting process itself would require that a provider hire an entire staff dedicated just to setting up, initiating, and conducting equal access administration on both an initial and an on-going basis for new subscribers and subscribers who seek subscription changes. There are costs associated with informing customers of their right to choose a long-distance carrier, and costs related to the initiation of service on one carrier and then changing to another carrier. The record in this proceeding does not demonstrate that mandated equal access is necessary or warranted in a market where customers have a choice of wireless providers and access to competitive IXC services. The evidence does not justify the added expense that will ultimately be passed on to wireless consumers.<sup>15/</sup>

B. Should the Commission Nonetheless Impose Equal Access on ESMR Providers, a Phased Approach Is In the Public Interest.

Should the Commission decide to impose equal access obligations on all or some CMRS providers, they should be phased in

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<sup>15/</sup> Nextel supports the Commission's tentative conclusion that CMRS providers should be allowed to recover the costs of implementing equal access. See NPRM at para. 95.

for new CMRS providers -- particularly those previously classified as private land mobile radio.<sup>16/</sup> As discussed above, Nextel and other reclassified CMRS providers are not technologically or administratively capable of providing equal access at this time. The necessary changes to Nextel's switches will be costly in terms of both time and money. Nextel anticipates that it will not be prepared to fully implement equal access prior to the end of the transition period specified in the Budget Act for reclassified private carriers to adjust their operations to common carrier regulation.

Accordingly, for reclassified providers who will continue to be regulated as private carriers until August 10, 1996, the Commission should phase in any equal access requirements beginning on that date. A phase-in time-table beginning after the expiration of the transition period would be less likely to interfere with the expeditious implementation of wide-area ESMR services. The sooner ESMR networks and other competing CMRS services are implemented, the sooner the CMRS marketplace will reach the competitive characteristics envisioned by Congress in the Budget Act.

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<sup>16/</sup> The Commission, however, should exempt traditional analog SMR services from equal access obligations. These SMR services provide only a small amount of long-distance traffic. They typically have no switching facilities that could provide equal access. The imposition of these obligations on such small businesses would be cost-prohibitive, and could force them into simply discontinuing all interconnect services. Such a result is not in the public interest and was never intended by Congress in the Budget Act.

C. Because There Is No Bottleneck In the CMRS Marketplace, the Commission Should Not Require The Presubscription and Balloting Process Currently Imposed Upon the Bottleneck LECs.

At a minimum, the Commission should refrain from imposing the full-blown presubscription and balloting process on the CMRS marketplace. Because there is no bottleneck and consumers will have a choice to go elsewhere for "1+" access to a particular long-distance carrier, the Commission should permit the use of "dial-around arrangements." This would ensure that customers are given access to their preferred provider, albeit by dialing a few more digits, on any wireless system without the resulting price increases created by the balloting process. Moreover, the CMRS provider will further cut costs because the dial-around arrangements can be accomplished without the more expensive and complex switching equipment. This would provide consumers access to any long-distance carrier on any wireless system, and that access would be provided at a price that is not increased by the imposition of full-blown equal access obligations.

IV. LEC-TO-CMRS INTERCONNECTION

A. Whether By Contract Or By Tariff, The Commission Must Ensure That All CMRS Providers Can Obtain Nondiscriminatory Interconnection With The LECs.

In the CMRS Order, the Commission made it clear that all CMRS providers are entitled to interconnection with the LECs. In this NPRM, the Commission queries whether interconnection should be in accordance with tariffs or by good faith negotiations between the parties. Nextel believes that whether by tariff or by contract, assuring *nondiscriminatory* interconnection for all CMRS providers

at just and reasonable rates must be the Commission's preeminent goal in fashioning interconnection arrangements between LECs and CMRS providers.

As noted above, CMRS carriers planning to provide regional and even nationwide services need a consistent, uniform approach to interconnection. Having to deal with numerous LECs and up to 50 different state regulatory agencies having different approaches to interconnection would seriously impede the development of wide-area wireless services. As the Commission recognizes in the NPRM, there are both advantages and disadvantages to obtaining interconnection through tariff or contract.<sup>17/</sup> It is not clear that either approach will consistently yield the most economic, efficient and flexible interconnection arrangements.

Nextel has obtained interconnection with local exchange carriers in some states through negotiated agreements. In other states, Nextel is purchasing LEC interconnection through the carrier's intrastate access tariff. Typically, even where interconnection is by negotiated agreement, the agreement references the LEC's intrastate tariff for specified services, e.g., recurring and non-recurring rates for DS-1 circuits. While Nextel has had some efficient experiences, and some difficult experiences, with each approach, there is a generally greater assurance that competing carriers are obtaining comparable interconnection rates, terms and conditions under the tariffing approach.

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<sup>17/</sup> NPRM at paras. 115-116.

Thus, given the importance of assuring that LECs, particularly those with wireless affiliates, do not discriminate against unaffiliated wireless competitors or new entrants, Nextel believes that interconnection tariffs may be the most efficacious means of ensuring that all CMRS providers are given the same rates, terms and conditions as all other similarly situated CMRS providers. Tariffs provide that all interconnection terms and conditions are on file for public inspection, thereby minimizing opportunities for carriers to engage in unreasonable discrimination. Moreover, tariffing should help expedite interconnection, since the wireless carrier will know what competitors are paying for comparable services.18/

The point here is that the Commission must enforce the requirements of Sections 201 and 202 of the Communications Act by assuring that every CMRS provider has access to the most favorable

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18/ The California Public Utilities Commission ("CPUC") recently required local exchange carriers in California to file new interconnection tariffs for wireless carriers and to discontinue interconnection with cellular providers through negotiated agreements, absent a showing of special circumstances. The CPUC concluded that tariffing intrastate interconnection services would facilitate improved competition among wireless providers and minimize special treatment for selected wireless carriers. See Dec. 94-04-085 (April 20, 1994).

Nextel has been informed by at least one California LEC, however, that it plans to continue to execute negotiated agreements with wireless carriers containing the "business terms" of the interconnection relationship in addition to the tariffed rates, terms and conditions. This dual tariff/"business contract" mechanism could conceivably be misused to provide more favorable arrangements with certain carriers, thereby subjecting other CMRS providers to unreasonably discriminatory interconnection arrangements. Nextel will pursue this concern in the appropriate state proceeding.

terms and conditions provided by the LEC to any other similarly situated CMRS provider for comparable interconnection services. As an alternative to a tariff filing obligation, Nextel believes this can be accomplished through revising the good faith negotiation requirement, as described in the NPRM.<sup>19/</sup> Specifically, the Commission proposes that all negotiated agreements contain a "most favored nation" clause requiring the LEC to guarantee that the most favorable terms, condition and rates provided by the LEC to one CMRS provider be made available to all. It also proposes requiring LECs to file with the Commission all interconnection agreements so that their terms, conditions and rates are available for public inspection. With proper oversight, this approach could also be effective in achieving many of the benefits of tariffing without the administrative costs, delays and inflexibility inherent in the tariffing process.

B. The Commission Must Enforce Its Mutual Compensation Policy To Ensure That, In Any Interconnection Agreement, The CMRS Provider Receives Compensation For Landline Traffic Terminating On The CMRS System.

Interconnection agreements generally provide the LEC with compensation for terminating a call which originated on the CMRS provider's system. However, wireless carriers have not had the same ability to enforce compensation by the LEC for landline calls which terminate on the wireless provider's system. CMRS providers, nonetheless, are equally entitled to such compensation, and the Commission should take the steps necessary herein to ensure that

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<sup>19/</sup> See NPRM at para 119.

mutual compensation is a part of any interconnection agreement between a LEC and a CMRS provider. Accordingly, Nextel supports the NPRM's reiteration of the principle of mutual compensation between landline LECs and CMRS providers.<sup>20/</sup> Whether by contract or by tariff, mutual compensation must be enforced.

#### V. CMRS-TO-CMRS INTERCONNECTION

##### A. The Commission Should Not Mandate Interconnection Among CMRS Providers.

In the NPRM, the Commission seeks comment on whether it should mandate interconnection among CMRS providers. The CMRS marketplace was defined by the Commission less than a year ago, some CMRS players are just beginning to emerge while others have yet to be licensed, and it is still not clear what players will actually be participants in the CMRS marketplace. Due to the infancy of the CMRS marketplace and the uncertainty surrounding it, the Commission would be far premature in mandating such CMRS-to-CMRS interconnection.

Enforcing this interconnection mandate before the industry is given a chance to evolve is unjustified and unnecessary -- particularly since all CMRS end-users can currently interconnect with users of any other network through the public switched telephone network ("PSTN"). Any user on any CMRS system can reach any other party with a telephone number -- on a wireless or wireline network -- through the public telephone network. Thus, at

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<sup>20/</sup> NPRM at para. 107.

this stage in CMRS development, there appears to be no compelling need for CMRS-to-CMRS interconnection regulation.

## VI. RESALE OBLIGATIONS

### A. The Commission Should Not Impose Resale Obligations Upon All CMRS Providers.

When the Commission first created the cellular industry, it intentionally established a duopoly, thus ensuring that only two parties would be licensed to provide cellular service in each market.<sup>21/</sup> In an effort to create competition in this government-sanctioned duopoly, the Commission imposed a resale policy on cellular providers, prohibiting them from restricting the resale of their services by third parties. The Commission further refined that policy to ensure that the wireline-affiliated cellular provider (Block A provider) -- which in many cases was licensed or operational long before the non-wireline providers (Block B provider) -- would permit the Block B provider to resell the Block A service until such time that the Block B facilities were constructed and operational. This allowed the Block B provider to establish a market presence even while its facilities were still under construction.

In the CMRS marketplace, there is no such duopoly. As ESMR systems are constructed and placed into operation and PCS systems are licensed and operational, there will be several providers from which consumers can choose. There should be a natural evolution to

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<sup>21/</sup> See Report and Order, 86 FCC 2d 469 (1981) ("Cellular Order"), recon., 89 FCC 2d 58 ("Cellular Reconsideration Order"), further recon., 90 FCC 2d 571 (1982), appeal dismissed sub nom. United States v. FCC, No. 82-1526 (D.C. Cir. 1983).



a competitive market without the imposition of resale obligations on these providers.

Moreover, imposing resale obligations on CMRS providers could entice certain competitors to avoid the significant investment by simply using the systems built out by other parties. Imposing mandated resale on a competitive business like ESMR, for example, means that all of the risk ESMR entrepreneurs are taking in financing and building out advanced mobile communications networks to gain a competitive edge could be cancelled out by any other competitor, who could avoid those risks by taking advantage of mandated access to any piece of the ESMR network they desire. It would be inequitable to allow one party to invest millions -- perhaps billions -- of dollars in a system only to have that system used by a third party who has invested no time and no money in the licensing, construction and operation of that system. CMRS are not bottleneck facilities; therefore, there is no justification for imposing resale obligations on this segment of the telecommunications market. If a CMRS provider finds it economical to allow a third party to resell its services, it will do so in accordance with marketplace forces.

## VII. CONCLUSION

Equal access obligations are a remnant of the breakup of the former Bell System. In the CMRS market, there is no comparable bottleneck control of access to IXCs. Consumers have choices -- both wireless provider choices and long-distance carrier choices. Due to the administrative and financial burdens imposed by an equal